FILED
MAR 8 1985
ALEXANDER L. STEVAS,
CLERK

(5)

NO. 84-798

---

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

---

UNITED STATES OF AMERICA,
Plaintiff-Respondant

V.

GEORGE S. McLEAN,
Defendant, Petitioner

---

# PETITIONER'S SECOND SUPPLEMENTAL BRIEF INVITING ATTENTION TO RECENT DEVELOPMENTS IN THE PROSECUTION OF UNITED STATES V. CEI, ET AL, CR. NO. H-82-224 AND THE BACKGROUND TO McLEAN'S PRO SE POSITION

---

George S. McLean, pro se
6908 Country Club Drive
La Jolla, California 92037
(619) 459-1926 or 454-3712

March 7, 1985

16 pp

# TABLE OF CONTENTS

Page

Table of Authorities.....(ii)

Discussion..... 1

# TABLE OF AUTHORITIES

Page

CONSTITUTION:

U.S. Constitution, Amend. VI.....7

CASES:

Faretta V. California (1975)
422 U.S. 806.....7

In re Michaelson, C.A. Nevada
(1975) 511 F.2d 882, Cert.
Denied, 421 U.S. 978.....8

People v. Heidelberg (1975)
338 N.E. .2d 56.....7

United States v. DeLoach (1974)
504 F.2d 185.....8

United States v. McLean, 5th Cir.
(1984) 738 F.2d 655.....9

STATUTES:

15 U.S.C. §78ff(c)(3)
(Eckhardt Amendment).....10,12

NO. 84-798

---

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

---

UNITED STATES OF AMERICA,
Plaintiff-Respondant

V.

GEORGE S. McLEAN,
Defendant, Petitioner

---

# PETITIONER'S SECOND SUPPLEMENTAL BRIEF INVITING ATTENTION TO RECENT DEVELOPMENTS IN THE PROSECUTION OF UNITED STATES V. CEI, ET AL, CR. NO. H-82-224

---

The Petitioner, George S. McLean, submits this supplemental brief in compliance with Rule 22.6 to bring to the Court's attention recent developments in the U.S. v. CEI, et al, Cr. No. H-82-224, and a recent-

ly filed civil suit which are relevant to this Petition.

The Government lawyers have made an issue of McLean's pro se position which warrants a complete airing. A chronological explanation is presented below.

1. PETITIONER McLEAN'S PRO SE POSITION

In early January 1980, Harvester selected and paid for a Los Angeles lawyer to represent both McLean and Uriarte during the Pemex investigation. By the summer or early fall of 1982, Uriarte had become dissatisfied with this lawyer's representation and hired a lawyer of his own choosing in Washington, D.C. Harvester approved of this change, but on November 12, 1982, expressed their concern for the bills for services rendered on behalf of Uriarte.

McLean first heard the rumors of a Harvester plea bargain negotiation on November 3, 1982, which Harvester

would not confirm. McLean first learned that he had been set up as a "scapegoat," along with Uriarte, when he attended the Harvester court hearing in Houston on November 18, 1982. After the hearing, McLean advised the Harvester lawyers of his anger and displeasure with Harvester's plea bargaining action and Harvester's acquiescence in the Government's description of McLean as a criminal. In a heated discussion with the Harvester counsel of record, McLean was twice advised that if he "declared war" on Harvester, Harvester would drop its support, i.e., support in the sense of paying McLean's legal fees. This Harvester lawyer immediately phoned McLean's lawyer in Los Angeles and advised him of the argument.

Then, on or about November 22, 1982, Harvester notified McLean's lawyer that Harvester would not guarantee

McLean's legal fees. McLean's lawyer in turn notified McLean that he would not continue with McLean's case unless he was assured that the payment of his estimated $200,000 fee would be secured by an irrevocable letter of credit or McLean's personal promissory note for $200,000 appropriately collateralized. McLean could not obtain the necessary outside backing and on January 3, 1983 advised his lawyer that he would agree to a decision to release him from any further obligations in the case. (McLean did not hire him, and therefore could not release him.)

Harvester continued their refusal to pay Uriarte's self chosen lawyer and finally released him in late December 1982.

In early 1983, the Harvester lawyers, Kirkland & Ellis, selected the Houston firm of Vinson & Elkins to take

Uriarte's case. Vinson & Elkins accepted the case as an "accommodation" to International Harvester and Kirkland & Ellis. [1]

In early January 1983, McLean first motioned the Court to appoint counsel or to compel Harvester to pay for the lawyer of his choice. This and subsequent similar motions were denied.

A hearing was held on April 4, 1983, at the Government's request, regarding counsel for the Petitioner's defense.

---

[1] Uriarte advised the Petitioner that his Vinson & Elkins attorney first tried to convince him to plea bargain, which he rejected. Shortly after the Government filed its notice of appeal of the dismissal of 43 counts, Harvester advised Uriarte they would not pay his legal fees to counter the Government's appeal, nor would they pay any of his personal expenses associated with the case, such as travel from his home in Miami to Houston. By August 1983, Harvester was threatening to completely drop Uriarte's legal support. At this point, he decided to accept the Government's plea bargain offer.

The Court advised McLean of the importance of counsel and subsequently after reviewing his financial records again refused to appoint counsel, presumably because McLean did not meet the "pauper" test. The Court also suggested at the hearing that McLean sue Harvester for legal fees. [2/]

McLean has been unable to raise the money necessary for competent counsel, as well as his own personal expenses associated with his defense and has proceeded pro se as the only realistic solution. However, McLean has also steadfastly made it clear to the trial court in writing and verbally in hearings that

---

[2/] McLean subsequently filed a suit against Harvester on October 22, 1984 in Federal District Court in Houston for legal costs and other damages arising from the illegal actions taken against McLean by Harvester in conspiracy with the Government.

he has not and will not waive his Sixth Amendment rights to competent counsel and witnesses for his defense.

The Government argues in their brief (Gov't. 5) that McLean cannot escape the application of the cross-appeal requirement by claiming ignorance of the rules citing Faretta v. California, 422 U.S. 806, 835 (1975). However, in Faretta a choice was made to waive counsel, while in the instant case McLean has been denied his request for Court appointed counsel because he does not qualify as an indigent. But McLean has very specifically not waived his Sixth Amendment rights. Only if McLean had waived his right to counsel would McLean have no right to complain that his pro se representation prevented him from understanding the cross-appeal rules. People v. Heidelberg (1975) 338 N.E. .2d 56.

McLean's Sixth Amendment rights to

counsel and a jury trial encompass a right to have his theory of the case argued vigorously to the jury. U.S. v. DeLoach (1974) 504 F.2d 185. And McLean's theory is that the Government and Harvester joined together to use McLean as a pawn and set him up as the scapegoat. McLean could hardly press this theory through counsel beholden to Harvester, because when an attorney is paid by someone other than the client to represent the client, there is a real and present danger that the attorney may in actuality be representing not the best interests of his client but those of his compensator. In re Michaelson, C.A. Nev. 1975, 511 F.2d 882 at 888, cert. denied, 421 U.S. 978. The Fifth Circuit recognized the ugly truth when they stated, "Harvester would have no incentive to assist McLean in his defense; in fact, Harvester would have every incentive to shift as much

culpability as possible to McLean." United States v. McLean, 5th Cir. 1984, 738 F.2d 655, 659.

2. EXPORT IMPORT BANK CIVIL SUIT

On February 25, 1985, the United States of America and the Export Import Bank filed a civil suit stemming from the Crawford criminal case. The Petitioner, McLean, is named as a defendant along with Harvester, CEI, Donald G. Crawford and others. McLean is again charged with allegedly conspiring to rig bid prices with much of the language lifted directly from the Crawford indictment. The Government's act of conspiring to establish McLean as Harvester's scapegoat has now resulted in McLean being unfairly and illegally named in this civil suit, which will drain more of his energy and personal resources. The Fifth Circuit in the United States v. McLean id. determined at 659 that a major objective

of the Eckhardt Amendment is to prevent the employer from making its employee a scapegoat. The naming of McLean as a defendant in this suit can only be viewed as vindictiveness on the part of the Government because McLean has revealed their chicanery to the Courts.

3. SWISS AND BAHAMIAN DEPOSITIONS

In late November 1984, depositions were taken in Zurich, Switzerland concerning bank evidence the Government had secured through government to government negotiations. At these deposition hearings it was learned that a supplementary request for additional evidence made in 1983 might lead to additional evidence being available in April 1985. On February 28, 1985, the Government filed a Notice of a Deposition to be held the week of March 11, 1985 in Nassau, Bahama also concerning bank records. McLean draws attention to the fact that the

Government has motioned on several occasions for continuances in order to gather their evidence, which they should have possessed prior to the indictment being filed over two years ago. However, when McLean, on October 18, 1982, asked to give evidence without immunity to the Houston grand jury, he was told by the prosecutor it was "too late" and the Government packed up the grand jury the next day. The Government's brief identifies McLean as a "non-lawyer" (Gov't 5). [3/] McLean is in fact an engineer and as such is very familiar with balancing levers. McLean sees very little balance in the Government's act of abruptly terminating the term of the Houston grand jury on October 20, 1982 under the banner of judicial economy

---

[3/] Petitioner McLean is a 1958 engineering graduate of Cornell University and has practiced in the fields of mechanical and electrical engineering for over 26 years.

after close to four years of grand jury testimony, while on the other side of the fulcrum the Government would continue to spend many thousands of dollars gathering overseas evidence through government to government channels over a 29 month period.

Rep. Eckhardt expressed considerable concern in the House hearings over the ability of an individual defendant to put up a defense which could counter the case presented by the Government made possible by their almost limitless resources and ability to bring in foreign witnesses. The Eckhardt Amendment was intended to right this potential imbalance by providing a $1 million fine per violation of the FCPA, which would compel the major corporation to contend charges made against it and bring in witnesses which could also be used for the employee's defense.

The Petitioner respectfully asks the Court to issue its Writ of Certiorari.

Respectfully submitted,

George S. McLean, pro se
6908 Country Club Drive
La Jolla, California 92037
(619) 459-1926 or 454-3712